

CARL J. ORESKOVICH, WSBA #12779
ETTER, McMAHON, LAMBERSON
VAN WERT & ORESKOVICH, P.C.
618 West Riverside Avenue, Suite 210
Spokane, WA 99201
(509)747-9100
(509)623-1439 Fax
Email: carl@ettermcmahon.com

Attorney for Defendant Randy Coy James Holmes

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RANDY COY JAMES HOLMES,

Defendant.

No. 2:18-cr-00134-SMJ

**DEFENDANT’S SENTENCING
MEMORANDUM AND MOTION
FOR DOWNWARD DEPARTURE**

COMES NOW, the Defendant Randy Coy James Holmes, by and through his attorney of record and hereby submits the following Sentencing Memorandum and Motion for Downward Departure. As explained fully below, Mr. Holmes respectfully requests that this Court deviate below the United States Sentencing Guidelines (“USSG”) Range and sentence him to 24-months

1 imprisonment. *See* 18 U.S.C. § 3553(a).

2
3 **BACKGROUND**

4
5 On May 9, 2019, Mr. Holmes pled guilty to one count of Felon in
6 Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§ 922(g)(1)
7 and 924(a)(2). (ECF No. 42.) The statement of facts contained in the Plea
8 Agreement provides, in part:
9
10

11
12 On August 7, 2017, a Deputy Sheriff from the Grant County
13 Sheriff's Office, observed a red pickup truck exiting the
14 "College Apartments" located at 4278 Grape Dr. NE, in
15 Moses Lake, Washington. The Deputy observed that the
16 driver of the truck was not wearing a seatbelt. The Deputy
17 initiated a traffic stop. . . . Upon execution of a search
18 warrant, the deputies located a .22 caliber Ruger pistol in the
19 passenger side rear seat foot well, beneath the front
20 passenger side seat. This firearm was within arms-length of
21 [where] the Defendant was seated. . . . Subsequent
22 fingerprint testing by the Washington State Patrol Crime
23 Laboratory determined that a one friction ridge impression
24 was developed on the firearm. The forensic scientist
25 determined that the source of this impression was the
26 Defendant. . . . A review of the Defendant's criminal history
27 reveals that he has previously been convicted of a felony
28 offense . . .

29 (ECF No. 42 at 4.) Mr. Holmes has been in federal custody for this charge since
30 October 29, 2018. (*See* ECF No. 46 at 1.)

31
32 Mr. Homes was born on April 14, 1997 in Tacoma, Washington. (ECF No.

1 46 at 2.) At approximately the age of 6, Mr. Holmes' parents separated, and Mr.
2
3 Homes began using marijuana at the age of 9. (*Id.* at 16.) Before dropping out
4
5 of Moses Lake High School, Mr. Holmes became involved in gang activities.
6
7 (*Id.*) Mr. Holmes has a history of substance abuse and has multiple
8
9 methamphetamine related arrests. (*Id.* at 16-17.) Mr. Holmes also has a brother
10
11 in Spokane who recently admitted himself into substance abuse treatment for
12
13 heroin. (*Id.*)

14 Although Mr. Holmes dropped out of high school, he received his general
15
16 educational development ("GED") certificate in July of 2018 while incarcerated
17
18 at the Washington State Penitentiary. (ECF No. 46 at 17.) Mr. Holmes would
19
20 like to pursue vocational training, such as obtaining a welding certificate and has
21
22 expressed an interest in working on fishing boats in Alaska (after he is released
23
24 from confinement and allowed to leave Washington). Mr. Holmes' father
25
26 resides in Tacoma and has offered Mr. Holmes a place to live and resources to
27
28 begin a fresh start in the future.

29 Mr. Holmes' Plea Agreement provides that "[t]he United States agrees to
30
31 recommend that the Court impose a sentence at the low-end of the applicable
32
33 sentencing guideline range as determined by the Court." (ECF No. 42 at 6.)

1 Further, “[t]he Defendant may recommend any legal sentence he deems
2 appropriate.” (*Id.*)

3
4
5 **I. BASE OFFENSE LEVEL & ENHANCEMENTS**

6 Mr. Holmes concurs with the United States Probation Office’s calculation
7 of a base offense level of 14, pursuant to USSG § 2K2.1(a)(6)(A). This is also
8 consistent with the recommendation contained in the Plea Agreement. (ECF
9 No. 42 at 5.) Mr. Holmes also agrees with the four-level increasement based
10 upon the stipulation of the parties that the firearm had an obliterated serial
11 number contained in the Plea Agreement, along with the three-level downward
12 adjustment based upon Mr. Holmes’ timely acceptance of responsibility. (*See*
13 *id.* at 5-6.) As such, the Total Offense Level of 15 appears appropriate. (*See*
14 ECF No. 46 at 6-7.)

15
16
17
18
19
20
21
22 **II. DEPARTURES**

23 As indicated below, Mr. Holmes requests that this Court exercise its
24 discretion and grant him a downward departure based upon the considerations
25 articulated in 18 U.S.C. § 3553(a).

26
27
28
29 **III. 18 U.S.C. § 3553(a)**

30 Title 18, Section 3553(a) directs that “[t]he court shall impose a sentence
31
32

1 sufficient, but not greater than necessary, to comply with the purposes set forth
2
3 in paragraph (2) of this subsection.” The Court shall consider the “nature and
4
5 circumstances of the offense and the history and characteristics of the
6
7 defendant.” 18 U.S.C. § 3553(a)(1) (underlining added). The Court shall also
8
9 consider the need for the sentence imposed:

- 10 (A) to reflect the seriousness of the offense, to promote
11 respect for the law, and to provide just punishment for the
12 offense;
13 (B) to afford adequate deterrence to criminal conduct;
14 (C) to protect the public from further crimes of the
15 defendant; and
16 (D) to provide the defendant with needed educational or
17 vocational training, medical care, or other correctional
18 treatment in the most effective manner.

19 18 U.S.C. § 3553(a)(2).
20

21 Pursuant to the “remedial regime” established in *United States v. Booker*,
22
23 543 U.S. 220 (2005), the “Guidelines are no longer mandatory but are only
24
25 advisory.” *United States v. Carty*, 520 F.3d 984, 990 (9th Cir. 2008).
26
27 Nevertheless, the Guideline Range is still “the starting point and the initial
28
29 benchmark.” *Carty*, 520 F.3d at 991 (quoting *Kimbrough v. United States*, 552
30
31 U.S. 85, 108 (2007)). However, the Court “may not presume that the Guidelines
32
range is reasonable,” and the factors contained in 18 U.S.C. § 3553(a) are the

1 overarching guide in the Court's determination. *Carty*, 520 F.3d at 991. As
2 such, a sentencing court may take into account the individualized characteristics
3 of a defendant that warrant a downward departure from the Guideline Range. 18
4 U.S.C. § 3553(a).
5

6
7 In the situation at hand, consideration of the factors contained in 18 U.S.C.
8 § 3553(a) warrant a downward departure to 24-months imprisonment. At the
9 time Mr. Holmes committed the offense, he was only 20-years-old and
10 entangled in drug use and gang activity. *See* USSG § 5H1.1 ("Age (including
11 youth) may be relevant in determining whether a departure is warranted . . .");
12 *see also* USSG § 5H1.3 ("Mental and emotional conditions may be relevant in
13 determining whether a departure is warranted . . ."). In this vein, Mr. Holmes
14 began using drugs (marijuana) at the age of 9 approximately three years after his
15 parents separated. (*See* ECF No. 46 at 18.) However, Mr. Holmes recognizes
16 the need to turn his life around and his father is able to give him a fresh start in
17 Tacoma after Mr. Holmes is released from confinement. Further, Mr. Holmes
18 would benefit greatly from vocational training while incarcerated.
19
20
21
22
23
24
25
26
27
28
29

30 Based upon the rehabilitative aspect of the criminal justice system and Mr.
31 Holmes' age and issues leading to the commission of the offense, Mr. Holmes
32

1 would benefit from a term of imprisonment of 24-months so he may turn his life
2 around while still a young man. The USSG Sentencing Range is only one of
3 seven overarching considerations for the Court. *See* 18 U.S.C. §
4 3553(a)(4)(A)(i); *accord Carty*, 520 F.3d at 991 (“Nor should the Guidelines
5 factor be given more or less weight than any other”). Although Mr. Holmes has
6 such an extensive criminal history for a young man, the crime for which he took
7 responsibility and pled guilty (Felon in Possession of a Firearm and
8 Ammunition) takes into account Mr. Holmes’ troubled past.

15 CONCLUSION

16 For the foregoing reasons, Mr. Holmes respectfully requests the Court
17 grant his Motion for Downward Departure. Based upon the rehabilitative aspect
18 of the criminal justice system, Mr. Holmes requests that the Court sentence him
19 to 24-months imprisonment, with credit for the 11-months he will already have
20 served by the time of the Sentencing Hearing. *See* 18 U.S.C. § 3553(a).

21 RESPECTFULLY SUBMITTED this 29th day of August, 2019

22 By: /s/ Carl Oreskovich
23 Carl J. Oreskovich, WSBA #12779
24 Attorney for Defendant Holmes
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2019, I electronically filed the forgoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to Assistant United States Attorney Patrick J. Cushman at USAWAE.PCushmanECF@usdoj.gov.

SIGNED this 29th day of August, 2019 in Spokane, Washington.

By: /s/ Jodi Dineen
Jodi L. Dineen